

TELECOMMUNICATIONS TAX AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies property tax assessment provisions related to a telecommunications service provider.

Highlighted Provisions:

This bill:

- ▶ modifies the Property Tax Act by defining:
 - "public utility" to exclude a telecommunications service provider; and
 - "telecommunications service provider"; and
- ▶ provides that the State Tax Commission may not assess property owned by a telecommunications service provider.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2021, Chapter 314

59-2-201, as last amended by Laws of Utah 2017, Chapter 425

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-2-102** is amended to read:

59-2-102. Definitions.

As used in this chapter:

(1) (a) "Acquisition cost" means any cost required to put an item of tangible personal property into service.

(b) "Acquisition cost" includes:

(i) the purchase price of a new or used item;

(ii) the cost of freight, shipping, loading at origin, unloading at destination, crating, skidding, or any other applicable cost of shipping;

(iii) the cost of installation, engineering, rigging, erection, or assembly, including foundations, pilings, utility connections, or similar costs; and

(iv) sales and use taxes.

(2) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.

(3) "Air charter service" means an air carrier operation that requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

(4) "Air contract service" means an air carrier operation available only to customers that engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.

(5) "Aircraft" means the same as that term is defined in Section 72-10-102.

(6) (a) Except as provided in Subsection (6)(b), "airline" means an air carrier that:

(i) operates:

(A) on an interstate route; and

(B) on a scheduled basis; and

(ii) offers to fly one or more passengers or cargo on the basis of available capacity on a regularly scheduled route.

(b) "Airline" does not include an:

(i) air charter service; or

(ii) air contract service.

(7) "Assessment roll" or "assessment book" means a permanent record of the assessment of property as assessed by the county assessor and the commission and may be maintained manually or as a computerized file as a consolidated record or as multiple records by type, classification, or categories.

(8) "Base parcel" means a parcel of property that was legally:

(a) subdivided into two or more lots, parcels, or other divisions of land; or

(b) (i) combined with one or more other parcels of property; and

(ii) subdivided into two or more lots, parcels, or other divisions of land.

(9) (a) "Certified revenue levy" means a property tax levy that provides an amount of ad valorem property tax revenue equal to the sum of:

(i) the amount of ad valorem property tax revenue to be generated statewide in the previous year from imposing a multicounty assessing and collecting levy, as specified in Section 59-2-1602; and

(ii) the product of:

(A) eligible new growth, as defined in Section 59-2-924; and

(B) the multicounty assessing and collecting levy certified by the commission for the previous year.

(b) For purposes of this Subsection (9), "ad valorem property tax revenue" does not include property tax revenue received by a taxing entity from personal property that is:

(i) assessed by a county assessor in accordance with Part 3, County Assessment; and

(ii) semiconductor manufacturing equipment.

(c) For purposes of calculating the certified revenue levy described in this Subsection (9), the commission shall use:

(i) the taxable value of real property assessed by a county assessor contained on the assessment roll;

(ii) the taxable value of real and personal property assessed by the commission; and

(iii) the taxable year end value of personal property assessed by a county assessor contained on the prior year's assessment roll.

(10) "County-assessed commercial vehicle" means:

(a) any commercial vehicle, trailer, or semitrailer that is not apportioned under Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or property in furtherance of the owner's commercial enterprise;

(b) any passenger vehicle owned by a business and used by its employees for transportation as a company car or vanpool vehicle; and

(c) vehicles that are:

(i) especially constructed for towing or wrecking, and that are not otherwise used to transport goods, merchandise, or people for compensation;

- (ii) used or licensed as taxicabs or limousines;
- (iii) used as rental passenger cars, travel trailers, or motor homes;
- (iv) used or licensed in this state for use as ambulances or hearses;
- (v) especially designed and used for garbage and rubbish collection; or
- (vi) used exclusively to transport students or their instructors to or from any private,

public, or religious school or school activities.

(11) "Eligible judgment" means a final and unappealable judgment or order under Section 59-2-1330:

(a) that became a final and unappealable judgment or order no more than 14 months before the day on which the notice described in Section 59-2-919.1 is required to be provided; and

(b) for which a taxing entity's share of the final and unappealable judgment or order is greater than or equal to the lesser of:

- (i) \$5,000; or
- (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.

(12) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, that is subject to taxation and is:

(i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;

(ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or

(iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.

(b) "Escaped property" does not include property that is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology.

(13)(a) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(b) For purposes of taxation, "fair market value" shall be determined using the current

zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

(14) "Geothermal fluid" means water in any form at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.

(15) "Geothermal resource" means:

(a) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and

(b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.

(16) (a) "Goodwill" means:

(i) acquired goodwill that is reported as goodwill on the books and records that a taxpayer maintains for financial reporting purposes; or

(ii) the ability of a business to:

(A) generate income that exceeds a normal rate of return on assets and that results from a factor described in Subsection (16)(b); or

(B) obtain an economic or competitive advantage resulting from a factor described in Subsection (16)(b).

(b) The following factors apply to Subsection (16)(a)(ii):

(i) superior management skills;

(ii) reputation;

(iii) customer relationships;

(iv) patronage; or

(v) a factor similar to Subsections (16)(b)(i) through (iv).

(c) "Goodwill" does not include:

(i) the intangible property described in Subsection (19)(a) or (b);

(ii) locational attributes of real property, including:

(A) zoning;

(B) location;

(C) view;

(D) a geographic feature;

- 157 (E) an easement;
- 158 (F) a covenant;
- 159 (G) proximity to raw materials;
- 160 (H) the condition of surrounding property; or
- 161 (I) proximity to markets;
- 162 (iii) value attributable to the identification of an improvement to real property,
- 163 including:
- 164 (A) reputation of the designer, builder, or architect of the improvement;
- 165 (B) a name given to, or associated with, the improvement; or
- 166 (C) the historic significance of an improvement; or
- 167 (iv) the enhancement or assemblage value specifically attributable to the interrelation
- 168 of the existing tangible property in place working together as a unit.
- 169 (17) "Governing body" means:
- 170 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 171 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
- 172 Local Districts, the local district's board of trustees;
- 173 (c) for a school district, the local board of education;
- 174 (d) for a special service district under Title 17D, Chapter 1, Special Service District
- 175 Act:
- 176 (i) the legislative body of the county or municipality that created the special service
- 177 district, to the extent that the county or municipal legislative body has not delegated authority
- 178 to an administrative control board established under Section 17D-1-301; or
- 179 (ii) the administrative control board, to the extent that the county or municipal
- 180 legislative body has delegated authority to an administrative control board established under
- 181 Section 17D-1-301; or
- 182 (e) for a public infrastructure district under Title 17D, Chapter 4, Public Infrastructure
- 183 District Act, the public infrastructure district's board of trustees.
- 184 (18) (a) Except as provided in Subsection (18)(c), "improvement" means a building,
- 185 structure, fixture, fence, or other item that is permanently attached to land, regardless of
- 186 whether the title has been acquired to the land, if:
- 187 (i) (A) attachment to land is essential to the operation or use of the item; and

(B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or

(ii) removal of the item would:

(A) cause substantial damage to the item; or

(B) require substantial alteration or repair of a structure to which the item is attached.

(b) "Improvement" includes:

(i) an accessory to an item described in Subsection (18)(a) if the accessory is:

(A) essential to the operation of the item described in Subsection (18)(a); and

(B) installed solely to serve the operation of the item described in Subsection (18)(a);

and

(ii) an item described in Subsection (18)(a) that is temporarily detached from the land for repairs and remains located on the land.

(c) "Improvement" does not include:

(i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;

(ii) a moveable item that is attached to land for stability only or for an obvious temporary purpose;

(iii) (A) manufacturing equipment and machinery; or

(B) essential accessories to manufacturing equipment and machinery;

(iv) an item attached to the land in a manner that facilitates removal without substantial damage to the land or the item; or

(v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory-built housing unit is considered to be personal property under Section 59-2-1503.

(19) "Intangible property" means:

(a) property that is capable of private ownership separate from tangible property, including:

(i) money;

(ii) credits;

(iii) bonds;

(iv) stocks;

- 219 (v) representative property;
220 (vi) franchises;
221 (vii) licenses;
222 (viii) trade names;
223 (ix) copyrights; and
224 (x) patents;
225 (b) a low-income housing tax credit;
226 (c) goodwill; or
227 (d) a renewable energy tax credit or incentive, including:
228 (i) a federal renewable energy production tax credit under Section 45, Internal Revenue
229 Code;
230 (ii) a federal energy credit for qualified renewable electricity production facilities under
231 Section 48, Internal Revenue Code;
232 (iii) a federal grant for a renewable energy property under American Recovery and
233 Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and
234 (iv) a tax credit under Subsection 59-7-614(5).
235 (20) "Livestock" means:
236 (a) a domestic animal;
237 (b) a fish;
238 (c) a fur-bearing animal;
239 (d) a honeybee; or
240 (e) poultry.
241 (21) "Low-income housing tax credit" means:
242 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
243 or
244 (b) a low-income housing tax credit under Section 59-7-607 or Section 59-10-1010.
245 (22) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
246 (23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
247 valuable mineral.
248 (24) "Mining" means the process of producing, extracting, leaching, evaporating, or
249 otherwise removing a mineral from a mine.

(25) (a) "Mobile flight equipment" means tangible personal property that is owned or operated by an air charter service, air contract service, or airline and:

(i) is capable of flight or is attached to an aircraft that is capable of flight; or

(ii) is contained in an aircraft that is capable of flight if the tangible personal property is intended to be used:

(A) during multiple flights;

(B) during a takeoff, flight, or landing; and

(C) as a service provided by an air charter service, air contract service, or airline.

(b) (i) "Mobile flight equipment" does not include a spare part other than a spare engine that is rotated at regular intervals with an engine that is attached to the aircraft.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "regular intervals."

(26) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts, sand, rock, gravel, and all carboniferous materials.

(27) "Part-year residential property" means property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year.

(28) "Personal property" includes:

(a) every class of property as defined in Subsection (29) that is the subject of ownership and is not real estate or an improvement;

(b) any pipe laid in or affixed to land whether or not the ownership of the pipe is separate from the ownership of the underlying land, even if the pipe meets the definition of an improvement;

(c) bridges and ferries;

(d) livestock; and

(e) outdoor advertising structures as defined in Section 72-7-502.

(29) (a) "Property" means property that is subject to assessment and taxation according to its value.

(b) "Property" does not include intangible property as defined in this section.

(30) (a) "Public utility" means:

~~[(a) for purposes of this chapter,]~~ (i) the operating property of a railroad, gas

corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, [~~telephone corporation,~~] sewerage corporation, or heat corporation where the company performs the service for, or delivers the commodity to, the public generally or companies serving the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use; and

~~[(b)]~~ (ii) the operating property of any entity or person defined under Section 54-2-1 except water corporations.

(b) "Public utility" does not include the operating property of a telecommunications service provider.

(31) (a) Subject to Subsection (31)(b), "qualifying exempt primary residential rental personal property" means household furnishings, furniture, and equipment that:

(i) are used exclusively within a dwelling unit that is the primary residence of a tenant;

(ii) are owned by the owner of the dwelling unit that is the primary residence of a tenant; and

(iii) after applying the residential exemption described in Section 59-2-103, are exempt from taxation under this chapter in accordance with Subsection 59-2-1115(2).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of this Subsection (31) and Subsection (34).

(32) "Real estate" or "real property" includes:

(a) the possession of, claim to, ownership of, or right to the possession of land;

(b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and

(c) improvements.

(33) (a) "Relationship with an owner of the property's land surface rights" means a relationship described in Subsection 267(b), Internal Revenue Code, except that the term 25% shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code.

(b) For purposes of determining if a relationship described in Subsection 267(b), Internal Revenue Code, exists, the ownership of stock shall be determined using the ownership

312 rules in Subsection 267(c), Internal Revenue Code.

313 (34) (a) "Residential property," for purposes of the reductions and adjustments under
314 this chapter, means any property used for residential purposes as a primary residence.

315 (b) "Residential property" includes:

316 (i) except as provided in Subsection (34)(b)(ii), includes household furnishings,
317 furniture, and equipment if the household furnishings, furniture, and equipment are:

318 (A) used exclusively within a dwelling unit that is the primary residence of a tenant;

319 and

320 (B) owned by the owner of the dwelling unit that is the primary residence of a tenant;

321 and

322 (ii) if the county assessor determines that the property will be used for residential
323 purposes as a primary residence:

324 (A) property under construction; or

325 (B) unoccupied property.

326 (c) "Residential property" does not include property used for transient residential use.

327 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
328 commission may by rule define the term "dwelling unit" for purposes of Subsection (31) and
329 this Subsection (34).

330 (35) "Split estate mineral rights owner" means a person that:

331 (a) has a legal right to extract a mineral from property;

332 (b) does not hold more than a 25% interest in:

333 (i) the land surface rights of the property where the wellhead is located; or

334 (ii) an entity with an ownership interest in the land surface rights of the property where
335 the wellhead is located;

336 (c) is not an entity in which the owner of the land surface rights of the property where
337 the wellhead is located holds more than a 25% interest; and

338 (d) does not have a relationship with an owner of the land surface rights of the property
339 where the wellhead is located.

340 (36) (a) "State-assessed commercial vehicle" means:

341 (i) any commercial vehicle, trailer, or semitrailer that operates interstate or intrastate to
342 transport passengers, freight, merchandise, or other property for hire; or

(ii) any commercial vehicle, trailer, or semitrailer that operates interstate and transports the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.

(b) "State-assessed commercial vehicle" does not include vehicles used for hire that are specified in Subsection (10)(c) as county-assessed commercial vehicles.

(37) "Subdivided lot" means a lot, parcel, or other division of land, that is a division of a base parcel.

(38) "Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.

(39) "Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103.

(40) "Taxing entity" means any county, city, town, school district, special taxing district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or other political subdivision of the state with the authority to levy a tax on property.

(41) (a) "Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll, and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll.

(b) "Tax roll" includes tax books, tax lists, and other similar materials.

(42) "Telecommunications service provider" means the same as that term is defined in Section 59-12-102.

Section 2. Section **59-2-201** is amended to read:

59-2-201. Assessment by commission -- Determination of value of mining property -- Determination of value of aircraft -- Notification of assessment -- Local assessment of property assessed by the unitary method -- Commission may consult with county.

(1) (a) By May 1 of each year, the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:

(i) except as provided in Subsection (2), all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state;

(ii) all property of public utilities;

(iii) all operating property of an airline, air charter service, and air contract service;

(iv) all geothermal fluids and geothermal resources;

(v) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; and

(vi) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters that are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.

(b) (i) For purposes of Subsection (1)(a)(iii), operating property of an air charter service does not include an aircraft that is:

(A) used by the air charter service for air charter; and

(B) owned by a person other than the air charter service.

(ii) For purposes of this Subsection (1)(b):

(A) "person" means a natural person, individual, corporation, organization, or other legal entity; and

(B) a person does not qualify as a person other than the air charter service as described in Subsection (1)(b)(i)(B) if the person is:

(I) a principal, owner, or member of the air charter service; or

(II) a legal entity that has a principal, owner, or member of the air charter service as a principal, owner, or member of the legal entity.

(2) (a) The commission may not assess property owned by a telecommunications service provider.

(b) The commission shall assess and collect property tax on state-assessed commercial vehicles at the time of original registration or annual renewal.

~~[(a)]~~ (i) The commission shall assess and collect property tax annually on state-assessed commercial vehicles that are registered pursuant to Section 41-1a-222 or

41-1a-228.

~~[(b)]~~ (ii) State-assessed commercial vehicles brought into the state that are required to be registered in Utah shall, as a condition of registration, be subject to ad valorem tax unless all property taxes or fees imposed by the state of origin have been paid for the current calendar year.

~~[(c)]~~ (iii) Real property, improvements, equipment, fixtures, or other personal property in this state owned by the company shall be assessed separately by the local county assessor.

~~[(d)]~~ (iv) The commission shall adjust the value of state-assessed commercial vehicles as necessary to comply with 49 U.S.C. Sec. 14502, and the commission shall direct the county assessor to apply the same adjustment to any personal property, real property, or improvements owned by the company and used directly and exclusively in their commercial vehicle activities.

(3) (a) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property.

(b) The commission shall determine the rate of capitalization applicable to mines, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions.

(c) In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

(4) (a) As used in this Subsection (4), "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are:

(i) identified by year, make, and model; and

(ii) in average condition typical for the aircraft's type and vintage.

(b) (i) Except as provided in Subsection (4)(d), the commission shall use an aircraft pricing guide, adjusted as provided in Subsection (4)(c), to determine the fair market value of aircraft assessed under this part.

(ii) The commission shall use the Airliner Price Guide as the aircraft pricing guide, except that:

(A) if the Airliner Price Guide is no longer published or the commission determines

that another aircraft pricing guide more reasonably reflects the fair market value of aircraft, the commission, after consulting with the airlines operating in the state, shall select an alternative aircraft pricing guide;

(B) if an aircraft is not listed in the Airliner Price Guide, the commission shall use the Aircraft Bluebook Price Digest as the aircraft pricing guide; and

(C) if the Aircraft Bluebook Price Digest is no longer published or the commission determines that another aircraft pricing guide more reasonably reflects the fair market value of aircraft, the commission, after consulting with the airlines operating in the state, shall select an alternative aircraft pricing guide.

(c) (i) To reflect the value of an aircraft fleet that is used as part of the operating property of an airline, air charter service, or air contract service, the fair market value of the aircraft shall include a fleet adjustment as provided in this Subsection (4)(c).

(ii) If the aircraft pricing guide provides a method for making a fleet adjustment, the commission shall use the method described in the aircraft pricing guide.

(iii) If the aircraft pricing guide does not provide a method for making a fleet adjustment, the commission shall make a fleet adjustment by reducing the aircraft pricing guide value of each aircraft in the fleet by .5% for each aircraft over three aircraft up to a maximum 20% reduction.

(d) The commission may use an alternative method for valuing aircraft of an airline, air charter service, or air contract service if the commission:

(i) has clear and convincing evidence that the aircraft values reflected in the aircraft pricing guide do not reasonably reflect fair market value of the aircraft; and

(ii) cannot identify an alternative aircraft pricing guide from which the commission may determine aircraft value.

(5) Immediately following the assessment, the commission shall send, by certified mail, notice of the assessment to the owner or operator of the assessed property and the assessor of the county in which the property is located.

(6) The commission may consult with a county in valuing property in accordance with this part.

(7) The local county assessor shall separately assess property that is assessed by the unitary method if the commission determines that the property:

467 (a) is not necessary to the conduct of the business; and
468 (b) does not contribute to the income of the business.
469 Section 3. **Effective date.**
470 This bill takes effect on January 1, 2023.